Thus from whatever point of view the case is regarded, the notice given by the appellant was inadequate and therefore invalid. There remains only the question of the month's rent. I am of opinion that the rent was only due at the end of the year, and that therefore the appellant was not entitled to sue for it at an earlier period.

For these reeasons I am satisfied that the suit should have been dismissed. That is the conclusion which the learned Magistrate arrived at. This appeal must therefore be dismissed with costs.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

[THOMAS, C.J.

October 13, 1934.

S. S. P. SUPPIAH PILLAY.....Plaintiff.

v.

P. ARUMUGAM

P. VERAMUTHU.....Defendants.

[SELANGOR CIVIL SUIT No. 101 of 1934]

The Limitation Enactment, 1896, sections 13 and 21—Absence of a Defendant from the Federated Malay States—Exception of time during which Summons can be served—The Civil Procedure Code, 1918, section 66.*

The provisions of section 66 of the Civil Procedure Code, 1918, only require that the affidavit in support of an application for leave to issue a summons for service on a defendant out of the Federated Malay States shall shew in what place or country such defendant is or probably may be found.

Therefore a plaintiff cannot claim the benefit of the exception in section 13 of the Limitation Enactment, 1896, when he knows that the defendant is in India, but fails to make any application under section 66 of the Civil Procedure Code, because he does not know the address of the defendant.

S. M. Yong for the plaintiff.

K. K. Benjamin for the defendants.

Cur. Ad. Vult.

THOMAS, C .J.—This is a suit brought to recover the sum of $514, being the balance due in respect of a promissory note, and unpaid interest up to the 10th of April, 1934 at 24 per cent per annum.

The defendants admit having made the promissory note, but say that the unpaid balance of principal was merged in a bill of sale executed by the first defendant during the month of August, 1932 in favour of the plaintiff, and that the promissory note was thereby discharged. The second defendant claims to avail himself of the discharge pleaded by the first defendant, and further pleads that the promissory note is dated the 5th of July, 1930, that the payments made on account were made without his knowledge or consent, and that therefore the note is barred by the Limitation Enactment as far as he is concerned.

(The judgment goes on to deal with the value which can be placed on the evidence —Editor.)

The second defendant says that he had no knowledge of the payments made by the first defendant, and that they were not made at his request.

Section 21 of the Limitation Enactment provides that nothing in sections 19 and 20 "renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed or of payment made by or to the agent?"

The second defendant went to India. He says that he gave the plaintiff personally his address. This the plaintiff denies. In this matter I accept the plaintiff's statement.

Now under section 13 of the Limitation Enactment in computing any period of limitation prescribed by this Enactment the term during which the defendant shall have been absent out of the States shall be excluded from such computation except any time during which service of a writ of summons can, during the absence of such defendant, be made in any mode prescribed by law.

There is a note at page 61 of the 6th edition of *Rivaz* on Limitation as follows:—

> " Under Act IX of 1871 the operation of the section was limited to cases, where the defendant during his absence could not be served with a summons."

Sections 63—68 of the Civil Procedure Code relate to service out of the Federated Malay States. Section 63 provides that:—

> " no summons for service on a defendant out of the Federated Malay States shall be issued by any Court without the leave of the Supreme Court or a Judge thereof."

Section 66 provides that:—

> " every application for leave to issue a summons for service on a defendant out of the Federated Malay States shall be supported by an affidavit or other evidence .....shewing in what place or country such defendant is or probably may be found.....a copy of the plaint shall be filed with the application."

The plaintiff knew that the second defendant was in India, but was unable on enquiry to discover his address. He, therefore, did nothing. He assumed that any application for service out of the jurisdiction would be refused because the address could not be supplied.

Section 65 only requires a statement as to the place or country in which the defendant is or probably may be found. It has been suggested that leave would not be granted when the applicant is unable to give a definite address where service may be made. It has been suggested that there has been a decision to that effect. Such search as I have been able to make has not disclosed any such decision.

The case of *Appusamy Gabriel Daud* v. *Abu Bakar*, 5 F.M.S.L.R. 110 decided that as the defendant was neither in the Colony nor in the Federated Malay States during the three years prior to the action, and the plaintiff always knew where to serve him, the proviso in section 13 applied. In the course of that case reference was made to the case of *R. E. Mohamed Kassim* v. *Tambyah*, Civil Suit 22/16 where Sir Thomas Braddell held in the plaintiff's favour in a similar matter. But it was there clearly proved that defendant's period of absence out of the jurisdiction did actually reduce the time of limitation to less than three years; it also appears that plaintiff did not know defendant's whereabouts at all during a period of twenty months of such absence out of the jurisdiction, and therefore, could not have served a summons upon him under section 78 of the Civil Procedure Code of that date.

I have not been able to refer to that case, but it is stated that the defendant's whereabouts were not known at all. In the present case the second defendant was known to be in India.

In my opinion the second defendant could have been served during the whole of the time that he was in India.

For the purposes of the Enactment a suit is instituted by presenting a plaint to the Court or such officer as it appoints in this behalf (Civil Procedure Code section 40) and by the issue of a summons (section 55). When the summons is not served within a period of one year, a fresh summons may be applied for (section 93). The plaintiff has not adopted that course, and he cannot now complain if his right of action has been barred by the Limitation Enactment.

There will therefore be judgment against the first defendant for the sum of $514/- balance of principal on the note together with interest at 24 per cent per annum from the due date to the date of the filing of the suit, and interest at 18 per cent per annum from the date of filing the suit until judgment and costs, and interest at 6 per cent per annum on the decretal amount from the date of judgment until the date of payment. The claim is dismissed as against 2nd defendant with 1/3 costs. Liberty to apply.

Judgment accordingly.